

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ILKA WRIGLEY)	
Claimant)	
VS.)	
)	Docket No. 162,882
MEDICALODGES, INC.)	
Respondent)	
Self-Insured)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

Claimant requested review of the Award dated August 31, 1995, entered by Administrative Law Judge Steven J. Howard. The Appeals Board heard oral argument on June 6, 1996.

APPEARANCES

James E. Martin of Overland Park, Kansas, appeared for the claimant. H. Wayne Powers of Overland Park, Kansas, appeared for the respondent. Frank A. Caro of Overland Park, Kansas, appeared for the Workers Compensation Fund.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Administrative Law Judge awarded claimant permanent partial general disability benefits based upon a 30 percent whole body functional impairment rating. The parties requested the Appeals Board to review the following issues:

- (1) Whether claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent.
- (2) Whether claimant gave respondent timely notice of accident and, if not, whether respondent was prejudiced by that failure.
- (3) Whether claimant is entitled to temporary total disability benefits for the period from the date of accident on January 11, 1992, through February 4, 1992.
- (4) Nature and extent of injury and disability.
- (5) Whether the Administrative Law Judge erred by failing to specify the medical expenses to be paid by respondent and the future medical benefits which claimant may be entitled.
- (6) Who should be responsible for the administrative costs, including court reporters' fees?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Administrative Law Judge should be modified to award claimant benefits for a 55 percent permanent partial general disability.

- (1) The Administrative Law Judge found that on January 11, 1992, claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent when she assisted a coworker move a patient in violation of her then existing 15-pound lifting restriction. By the narrowest of margins, the Appeals Board agrees with that finding. One of the factors which swayed the Appeals Board was the Administrative Law Judge's opportunity to observe claimant testify on three different occasions. Therefore, the Administrative Law Judge had the enviable opportunity to assess claimant's demeanor and credibility. Further, although respondent raised the issue of whether claimant's urinary problems were caused by a bout of bronchitis rather than the alleged lifting incident, the evidence did not establish urinary incontinence immediately before the

January 11, 1992, lifting incident. Claimant's rendition of the facts surrounding the lifting incident are not improbable so as to be disbelieved.

(2) The Appeals Board agrees with the Administrative Law Judge's findings and conclusions regarding notice and prejudice. The Appeals Board finds it is more probably true than not that claimant provided respondent with notice of accident on or about January 31, 1992. However, the failure to provide notice earlier did not prejudice respondent to any degree.

(3) Claimant requested temporary total disability benefits for the period from January 11, 1992, through February 4, 1992, the approximate date claimant saw her specialist and was taken off work. The Appeals Board finds claimant's request for temporary total disability benefits during that period should be denied.

At the preliminary hearing held in May 1992, claimant testified she returned to work for the respondent one or two nights after the incident on January 11, 1992, and then missed work for two weeks because of bronchitis. At that same hearing claimant also testified she returned to work for respondent on approximately January 29 or January 30, 1992, at which time her incontinence worsened and she requested medical care.

The Appeals Board finds claimant has failed to establish the injuries arising from the January 11, 1992, accident prevented her from working during the period in question. Instead, the Appeals Board finds it is more probably true than not claimant did not work during that period due to her nonwork-related bronchitis.

(4) As indicated below, the Appeals Board finds claimant has established a 55 percent permanent partial general disability. That conclusion is based upon averaging claimant's 64 percent loss of access to perform work in the open labor market with her 45 percent loss of ability to earn a comparable wage.

Claimant has a history of urethra and bladder problems. In both 1984 and 1990 claimant underwent surgery for those problems. The Appeals Board finds the January 11, 1992, accident more probably than not sheared the sutures in claimant's abdomen which were previously used to attach the urethra to the bladder. According to Michael J. Poppa, D.O., the physician whom the Administrative Law Judge selected to perform an independent medical evaluation, claimant sustained additional permanent functional impairment as a result of this most recent detached urethra condition.

The Appeals Board finds the opinions regarding work restrictions and limitations of Kermit E. Krantz, M.D., are persuasive and should be utilized in determining claimant's permanent partial general disability. Not only is Dr. Krantz claimant's treating physician and surgeon, he is also professor emeritus of the gynecology and obstetrics department of The University of Kansas School of Medicine, and eminently qualified in the specific

area of medicine relevant to this proceeding. Dr. Krantz testified that claimant must now catheterize herself for the rest of her life and should avoid all physical activities. However, he does believe claimant can perform sedentary activities where she is not required to lift more than 5 pounds.

Using Dr. Krantz' restrictions, claimant's vocational expert Michael J. Dreiling testified that claimant lost 64 percent of her ability to perform work in the open labor market and lost 45 percent of her ability to earn a comparable wage. In his analysis, Mr. Dreiling considered claimant's preexisting work restrictions which eliminated claimant from portions of the open labor market even before the January 1992 accident occurred. The Appeals Board finds Mr. Dreiling's opinions more persuasive and credible than respondent's vocational rehabilitation expert Robert Miller.

Because hers is an "unscheduled injury", the computation of permanent partial general disability is governed by K.S.A. 1991 Supp. 44-510e which provides, in part:

"The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced, taking into consideration the employee's education, training, experience and capacity for rehabilitation, except that in any event the extent of permanent partial general disability shall not be less than [the] percentage of functional impairment. . . . There shall be a presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury."

Although not required, the Appeals Board averages the 64 percent loss of ability to perform work in the open labor market with the 45 percent loss of ability to earn a comparable wage and finds that claimant has a 55 percent work disability for which she is entitled to receive permanent partial general disability benefits.

The Appeals Board rejects claimant's argument that she is essentially unemployable. Likewise, the Appeals Board rejects respondent's argument that claimant has refused to attempt to perform an accommodated job which paid a comparable wage and, therefore, should be limited to benefits based upon her functional impairment rating. Although respondent offered claimant a sedentary position, claimant was neither qualified nor permitted by respondent to perform that job because she had not satisfied the continuing education requirements for a licensed practical nurse. Claimant did not have her continuing education requirements when she began working for the respondent as she was to obtain them over the course of her employment. This is not a situation where claimant has attempted to wrongfully manipulate her workers compensation award by refusing to work as in Fouk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995). Rather, it is a situation where respondent has

offered a position which claimant is not presently qualified to perform. Nothing prevents, or has prevented, respondent from offering claimant vocational rehabilitation benefits which would include obtaining the appropriate continuing education credits.

(5) Claimant requested an order specifying the medical expenses to be paid by the respondent and its insurance carrier. It appears the Administrative Law Judge ordered payment of certain medical expenses claimant incurred as a result of the January 11, 1992, accident, medical mileage in the sum of \$314.95, and future medical benefits upon proper application to the Director.

The Appeals Board orders all reasonable and necessary medical expenses, which were incurred up to the date of the Award, paid as authorized medical benefits.

(6) Pursuant to K.S.A. 44-555, the Appeals Board finds the administrative costs, including the court reporters' fees, should be paid by the respondent.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated August 31, 1995, entered by Administrative Law Judge Steven J. Howard should be, and hereby is, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Ilka Wrigley, and against the respondent, Medicalodges, Inc., a self-insured, for an accidental injury which occurred January 11, 1992, and based upon an average weekly wage of \$360.40 for 60 weeks of temporary total disability compensation at the rate of \$240.28 per week or \$14,416.80, followed by 355 weeks of permanent partial disability benefits at the rate of \$132.15 per week or \$46,913.25, for a 55% permanent partial general disability, making a total award of \$61,330.05.

As of April 14, 1997, there is due and owing claimant 60 weeks of temporary total disability compensation at the rate of \$240.28 per week or \$14,416.80, followed by 214.14 weeks of permanent partial disability compensation at the rate of \$132.15 per week in the sum of \$28,298.60 for a total of \$42,715.40, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$18,614.65 is to be paid for 140.86 weeks at the rate of \$132.15 per week, until fully paid or further order of the Director.

Claimant is awarded authorized medical benefits in accordance with the findings and conclusions made above, payment of unauthorized medical benefits up to \$350 upon presentation of proof of payment, and future medical benefits upon proper application and approval by the Director.

Respondent is ordered to pay all the administrative costs incurred in this proceeding, including the court reporters' fees.

Pursuant to stipulation, the Workers Compensation Fund is ordered to reimburse respondent 80 percent of the benefits due and payable in this proceeding.

IT IS SO ORDERED.

Dated this ____ day of April 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, Overland Park, KS
H. Wayne Powers, Overland Park, KS
Frank A. Caro, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director